

§ 1101.5

(C) When the Council acts under § 1101.4(b)(5)(vii) (A) or (B), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Council has received the fee payments described.

(6) *Records of another agency.* If a requested record is the property of another federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the Council will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

[45 FR 46794, July 11, 1980, as amended at 53 FR 7341, Mar. 8, 1988]

§ 1101.5 Testimony and production of documents in response to subpoena, order, etc.

No person shall testify, in court or otherwise, as a result of activities on behalf of the Council without prior written authorization from the Council. This section shall not restrict the authority of a Council member to testify before Congress on matters within his or her official responsibilities as a Council member. No person shall furnish documents reflecting information of the Council in compliance with a subpoena, order, or otherwise, without prior written authorization from the Council. The Council may authorize testimony or production of documents after the litigant (or the litigant's attorney) submits an affidavit to the Council setting forth the interest of the litigant and the testimony or documents desired. Authorization to testify or produce documents is limited to authority expressly granted by the Council. When the Council has not authorized testimony or production of documents, the individual to whom the subpoena or order has been directed will appear in court and respectfully state that he or she is unable to comply fur-

ther with the subpoena or order by reason of this section.

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Subpart A—Temporary Waiver Requests

AUTHORITY: 12 U.S.C. 3348(b).

SOURCE: 57 FR 10982, Apr. 1, 1992, unless otherwise noted.

§ 1102.1 Authority, purpose and scope.

(a) *Authority.* This subpart is issued under section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (12 U.S.C. § 3348(b)).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing temporary waiver proceedings under Section 1119(b) of Title XI of FIRREA (12 U.S.C. 3348(b)). These procedures apply whenever a State appraiser regulatory agency requests the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") for a waiver of any requirement relating to certification or licensing of a person to perform appraisals under Title XI of FIRREA. They also apply whenever the ASC, based on sufficient, credible information or requests received from other persons or entities, initiates a temporary waiver proceeding.

§ 1102.2 Requirements for requests.

A request will not be deemed received by the ASC unless it fully and accurately sets out:

(a) If the requester is a State Appraiser Regulatory Agency, a written, duly authorized determination by the State Appraiser Regulatory Agency that there is a scarcity of State licensed or State certified appraisers leading to significant delays in obtaining appraisals in federally related transactions. The scarcity can relate to the entire State or to particular geographical or political subdivisions. In the absence of such a written determination, a State Appraiser Regulatory Agency must ask the ASC for such a determination;

(b) The requirement or requirements of State law from which relief is being sought;

(c) A description of all significant problems currently being encountered in efforts to comply with Title XI;

(d) The nature of the scarcity of certified or licensed appraisers (including supporting documentation);

(e) The extent of the delays anticipated or experienced in obtaining the services of certified or licensed appraisers (including supporting documentation);

(f) The reasons why the requester believes that the requirement or requirements are causing the scarcity of certified or licensed appraisers and the service delays; and

(g) A specific plan for expeditiously alleviating the scarcity and the service delays.

§ 1102.3 Other requests and information submissions.

The federal financial institutions regulatory agencies and the Resolution Trust Corporation, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, may ask the ASC for a determination under § 1102.2(a) of this subpart, and may ask that the ASC exercise its discretionary authority to initiate a temporary waiver proceeding. Such regulated financial institutions and other persons or institutions do not need to comply with § 1102.2(g) of this subpart, but are strongly encouraged to include meaningful suggestions and recommendations for remedying the situation. A copy of the request or

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informational submission shall be forwarded promptly to the State Appraiser Regulatory Agency. The ASC shall consider these submissions and requests in exercising its authority to initiate a temporary waiver procedure. When the ASC initiates a temporary waiver proceeding, these documents shall correspond to a received request under § 1102.4 of this subpart.

§ 1102.4 Notice and comment.

The ASC shall publish promptly in the FEDERAL REGISTER a notice respecting:

- (a) The received request; or
- (b) The ASC order initiating a temporary waiver proceeding. The notice or initiation order shall contain a concise general statement of the nature and basis for the action and shall give interested persons 30 calendar days from its publication in which to submit written data, views and arguments.

§ 1102.5 Subcommittee determination.

Within 45 calendar days of the date of the publication of the notice or initiation order in the FEDERAL REGISTER, the ASC, by order, shall either grant or deny a waiver in whole, in part, and upon specified terms and conditions, including provisions for waiver termination. Such order shall respond to comments received from interested members of the public and shall provide the reasons for the ASC's finding. The order shall be published promptly in the FEDERAL REGISTER, which, in the case of an approval order, shall be after Federal Financial Institution Examination Council concurrence. Upon the ASC's determination that an emergency exists, the ASC may issue an interim approval order simultaneously with its action under § 1102.4 of this subpart. Any ASC approval order shall be effective only upon Federal Financial Institution Examination Council concurrence.

§ 1102.6 Waiver extension.

The ASC may initiate an extension of temporary waiver relief and shall follow §§ 1102.4, 1102.5 and 1102.7 of this subpart. A State Appraiser Regulatory Agency also may request an extension of temporary waiver relief by forwarding an additional written request to

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the ASC. A request for an extension from State Appraiser Regulatory Agency shall be subject to all the requirements of this subpart.

§ 1102.7 Waiver termination.

The ASC at any time may terminate a waiver order on the finding that:

- (a) The significant delays in obtaining the services of certified or licensed appraisers no longer exist; or
- (b) The terms and conditions of the waiver order are not being satisfied. The ASC shall publish a finding of waiver termination promptly in the FEDERAL REGISTER, giving interested persons no less than 30 calendar days from publication in which to submit written data, views and arguments. In the absence of further ASC action to the contrary, the finding of waiver termination automatically shall become final 21 calendar days after the close of the comment period.

Subpart B—Rules of Practice for Proceedings

AUTHORITY: 12 U.S.C. 3332, 3335, 3347, and 3348(c).

SOURCE: 57 FR 31650, July 17, 1992, unless otherwise noted.

§ 1102.20 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued under sections 1103, 1106, 1118 and 1119(c) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3332, 3335, 3347, and 3348(c)).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing non-recognition proceedings under section 1118 of Title XI (12 U.S.C. 3347); and other proceedings necessary to carry out the purposes of Title XI under section 1119(c) of Title XI (12 U.S.C. 3348(c)).

[57 FR 31650, July 17, 1992, as amended at 57 FR 35004, Aug. 7, 1992]

§ 1102.21 Definitions.

As used in this subpart:

- (a) *Subcommittee* or ASC means the Appraisal Subcommittee of the Federal Financial Institutions Examination

Council, as established under section 1011 of Title XI (12 U.S.C. 3310).

(b) *Party* means the ASC or a person, agency or other entity named as a party, including, when appropriate, persons appearing in the proceeding under § 1102.22 of this subpart.

(c) *Respondent* means any party other than the ASC.

(d) *Secretary* means the Secretary of the ASC under its Rules of Operation.

§ 1102.22 Appearance and practice before the Subcommittee.

(a) *By attorneys and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State or of the District of Columbia, or of any possession, territory, or commonwealth of the United States, may represent parties before the ASC upon filing with the Secretary a written notice of appearance stating that he or she is currently qualified as provided in this paragraph and is authorized to represent the particular party on whose behalf he or she acts.

(b) *By non-attorneys.* An individual may appear on his or her own behalf. A member of a partnership may represent the partnership, and an officer, director or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority. The partner, officer, director or employee must file with the Secretary a written statement that he or she has been duly authorized by the partnership, government unit, agency, institution, corporation or authority to act on its behalf. The ASC may require the representative to attach to the statement appropriate supporting documentation, such as a corporate resolution.

(c) *Conduct during proceedings.* All participants in a proceeding shall conduct themselves with dignity and in an orderly and ethical manner. The attorney or other representative of a party shall make every effort to restrain a client from improper conduct in connection with a proceeding. Improper language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct constitute grounds for immediate

exclusion from the proceeding at the direction of the ASC.

§ 1102.23 Formal requirements as to papers filed.

(a) *Form.* All papers filed under this subpart must be double-spaced and printed or typewritten on 8½" x 11" paper. All copies shall be clear and legible.

(b) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the ASC and of the filing party, the title and/or docket number of the proceeding and the subject of the particular paper.

(c) *Party names, signatures, certificates of service.* All papers filed must set forth the name, address and telephone number of the attorney or party making the filing, must be signed by the attorney or party, and must be accompanied by a certification setting forth when and how service has been made on all other parties.

(d) *Copies.* Unless otherwise specifically provided in the notice of proceeding or by the ASC during the proceeding, an original and one copy of all documents and papers shall be furnished to the Secretary.

§ 1102.24 Filing requirements.

(a) *Filing.* All papers filed with the ASC in any proceeding shall be filed with the Secretary, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(b) *Manner of filing.* Unless otherwise specified by the ASC, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

§ 1102.25 Service.

(a) *Methods; appearing party.* A serving party, who has made an appearance under § 1102.22 of this subpart, shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight

delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

(b) *Methods; non-appearing party.* If a party has not appeared in the proceeding in accordance with § 1102.22 of this subpart, the ASC or any other party shall make service by any of the following methods:

(1) By personal service;

(2) By delivery to a person of suitable age and discretion at the party's last known address;

(3) By registered or certified mail addressed to the party's last known address; or

(4) By any other manner reasonably calculated to give actual notice.

(c) *By the Subcommittee.* All papers required to be served by the ASC shall be served by the Secretary unless some other person shall be designated for such purpose by the ASC.

(d) *By the respondent.* All papers filed in a proceeding under this subpart shall be served by a respondent on the Secretary and each party's attorney, or, if any party is not so represented, then upon such party. Such service may be made by any of the appropriate methods specified in paragraphs (a) and (b) of this section.

§ 1102.26 When papers are deemed filed or served.

(a) *Effectiveness.* Filing and service are deemed effective:

(1) For personal service or same-day commercial courier delivery, upon actual delivery; and

(2) For overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in, or delivery to, an appropriate point of collection.

(b) *Modification.* The effective times for filing and service in paragraph (a) of this section may be modified by the ASC in the case of filing or by agreement of the parties in the case of service.

§ 1102.27 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not in-

cluded. The last day so computed is included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall not be included in the computation.

(b) *For service and filing responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time periods are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period; and

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period.

§ 1102.28 Documents and exhibits in proceedings public.

Unless and until otherwise ordered by the ASC or unless otherwise provided by statute or by ASC regulation, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the Secretary in the proceeding's public file and will be available for public inspection and copying at the address set out in § 1102.24 of this subpart.

§ 1102.29 Conduct of proceedings.

(a) *In general.* Unless otherwise provided in the notice of proceedings, all proceedings under this subpart shall be conducted as hereinafter provided.

(b) *Written submissions.* All aspects of the proceeding shall be conducted by written submissions only, with the exception of oral presentations allowed under § 1102.36 of this subpart.

(c) *Disqualification.* A Subcommittee member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record and decision in the case.

(d) *User of ASC staff.* Appropriate members of the ASC's staff who are not engaged in the performance of investigative or prosecuting functions in the

proceeding may advise and assist the ASC in the consideration of the case and in the preparation of appropriate documents for its disposition.

(e) *Authority of Subcommittee Chairperson.* The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings in accordance with this subpart.

(f) *Conferences.* (1) The ASC may on its own initiative or at the request of any party, direct all parties or counsel to meet with one or more duly authorized ASC members or staff at a specified time and place, or to submit to the ASC or its designee, suggestions in writing for the purpose of considering any or all of the following:

(i) Scheduling of matters, including a timetable for the information-gathering phase of the proceeding;

(ii) Simplification and clarification of the issues;

(iii) Stipulations and admissions of fact and of the content and authenticity of documents;

(iv) Matters of which official notice will be taken; and

(v) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of persons submitting affidavits or other documents and exhibits which may be introduced into the public file of the proceeding.

(2) Such conferences will not be recorded, but the Secretary shall place in the proceeding's public file a memorandum summarizing the results of the conference and shall provide a copy of the memorandum to each party. The memorandum shall control the subsequent course of the proceedings, unless the ASC for good cause shown by one or more parties to the conference, modifies those results and instructs the Secretary to place an amendatory memorandum to that effect in the public file.

(g) *Changes or extensions of time and changes of place of proceeding.* The ASC, in connection with initiating a specific proceedings under § 1102.32 of this subpart, may instruct the Secretary to

publish in the FEDERAL REGISTER time limits different from those specified in this subpart, and may, on its own initiative or for good cause shown, issue an exemption changing the place of the proceeding or extending any time limit prescribed by this subpart, including the date for ending the information-gathering phase of the proceeding.

(h) *Call for further briefs, memoranda, statements; reopening of matters.* The ASC may call for the production of further information upon any issue, the submission of briefs, memoranda and statements (together with written responses), and, upon appropriate notice, may reopen any aspect of the proceeding at any time prior to a decision on the matter.

[57 FR 31650, July 17, 1992, as amended at 57 FR 35004, Aug. 7, 1992]

§ 1102.30 Rules of evidence.

(a) *In general.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted under this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may be deemed or ruled admissible in a proceeding conducted under this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Stipulations.* Any party may stipulate in writing as to any relevant matters of fact, law, or the authenticity of any relevant documents. The Secretary shall place such stipulations in the public file, and they shall be binding on the parties.

(c) *Official notice.* Every matter officially noticed by the ASC shall appear in the public file, unless the ASC determines that the matter must be withheld from public disclosure under applicable Federal law.

§ 1102.31 Burden of proof.

The ultimate burden of proof shall be on the respondent. The burden of going

forward with a *prima facie* case shall be on the ASC.

§ 1102.32 Notice of Intention to Commence a Proceeding.

The ASC shall instruct the Secretary or other designated officer acting for the ASC to publish in the FEDERAL REGISTER a Notice of Intention To Commence A Proceeding (Notice of Intention). The Notice of Intention shall be served upon the party or parties to the proceeding and shall commence at the time of service. The Notice of Intention shall state the legal authority and jurisdiction under which the proceeding is to be held; shall contain, or incorporate by appropriate reference, a specific statement of the matters of fact or law constituting the grounds for the proceeding; and shall state a date no sooner than 25 days after service of the Notice of Intention is made for termination of the information-gathering phase of the proceeding. The Notice of Intention also must contain a bold-faced warning respecting the effect of a failure to file a Rebuttal or Notice Not To Contest under § 1102.33(d) of this subpart. The ASC may amend a Notice of Intention in any manner and to the extent consistent with provisions of applicable law.

§ 1102.33 Rebuttal or Notice Not To Contest.

(a) *When required.* A party to the proceeding may file either a Rebuttal or a Notice Not to Contest the statements contained in the Notice of Intention or any amendment thereto with the Secretary within 15 days after being served with the Notice of Intention or an amendment to such Notice. The Secretary shall place the Rebuttal or the Notice Not To Contest in the public file.

(b) *Requirements of Rebuttal; effect of failure to deny.* A Rebuttal filed under this section shall specifically admit, deny or state that the party does not have sufficient information to admit or deny each statement in the Notice of Intention. A statement of lack of information shall have the effect of a denial. Any statement not denied shall be deemed to be admitted. When a party intends to deny only a part or a qualification of a statement, the party shall

admit so much of it as is true and shall deny only the remainder.

(c) *Notice Not To Contest.* A party filing a Notice Not To Contest the statement of fact set forth in the Notice of Intention shall constitute a waiver of the party's opportunity to rebut the facts alleged, and together with the Notice of Intention and any referenced documents, will provide a record basis on which the ASC shall decide the matter. The filing of a Notice Not To Contest shall not constitute a waiver of the right of such party to a judicial review of the ASC's decision, findings and conclusions.

(d) *Effect of failure to file Rebuttal or Notice Not To Contest.* Failure of a party to file a response required by this section within the time provided shall constitute a waiver of the party's opportunity to rebut and to contest the statements in the Notice of Intention and shall constitute authorization for the ASC to find the facts to be as presented in the Notice of Intention and to file with the Secretary a decision containing such findings and appropriate conclusions. The ASC, for good cause shown, will permit the filing of a Rebuttal after the prescribed time.

§ 1102.34 Briefs, memoranda and statements.

(a) *By the parties.* Until the end of the information-gathering phase of the proceeding, any party may file with the Secretary a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The filing party shall simultaneously serve other parties to the proceeding with a copy of the document. No later than ten days after such service, any party may file with the Secretary a written response to the document and must simultaneously serve a copy thereof on the other parties to the proceeding. The Secretary will receive documents and responses and will place them in the public file.

(b) *By interested persons, in non-recognition proceedings.* Until the end of the information-gathering phase of a proceeding under section 1118 of FIRREA (12 U.S.C. 3347), any person with a demonstrable, direct interest in

the outcome of the proceeding may file with the Secretary a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The ASC's Chairperson or his or her designee may not accept any such written brief, memorandum or other statement if the submitting person cannot demonstrate a direct interest in the outcome of the proceeding. Upon acceptance of the written brief, memorandum or other statement, the Secretary shall make copies of the document and forward one copy thereof to each party to the proceeding. No later than ten days after such service, any party may file with the Secretary a written response to the document and must simultaneously serve one copy thereof on the other parties to the proceeding. The Secretary will place a copy of such briefs, memoranda, statements and responses in the public file.

§ 1102.35 Opportunity for informal settlement.

Any party may at any time submit to the Secretary, for consideration by the Subcommittee, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be included in the proceeding's public file over the objection of any party to such proceeding. This paragraph shall not preclude settlement of any proceeding by the filing of a Notice Not To Contest as provided in § 1102.33(c) or by the submission of the case to the ASC on a stipulation of facts.

§ 1102.36 Oral presentations.

(a) *In general.* A party does not have a right to an oral presentation. Under this section, a party's request to make an oral presentation may be denied if such a denial is appropriate and reasonable under the circumstances. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding.

(b) *Method and time of request.* Between the commencement of the proceeding and ten days before the end of the information-gathering phase, any party to the proceeding may file with

the Secretary a letter requesting that the Secretary schedule an opportunity for the party to give an oral presentation to the ASC. That letter shall include the reasons why an oral presentation is necessary.

(c) *ASC processing.* The Secretary must promptly forward the letter request to the Chairman of the ASC. The Chairman, after informally contacting other ASC members and the ASC's senior staff for their views, will instruct the Secretary to forward a letter to the party either: Scheduling a date and time for the oral presentation and specifying the allowable duration of the presentation; or declining the request and providing the reasons therefor. The party's letter request and the ASC's response will be included in the proceeding's public file.

(d) *Procedure on presentation day.* On the appropriate date and time, the party or his or her attorney (if any) will make the oral presentation before the ASC. Any ASC member may ask the party or the attorney, as the case may be, pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. The Secretary must enter promptly into the proceeding's public file a memorandum summarizing the subjects discussed during the oral presentation.

§ 1102.37 Decision of the Subcommittee and judicial review.

At a reasonable time after the end of the information-gathering phase of the proceeding, but not exceeding 35 days, the ASC shall issue a final decision, containing specified terms and conditions as it deems appropriate, in the matter and shall cause the decision to be published promptly in the FEDERAL REGISTER. The final decision shall be effective on issuance. The Secretary shall serve the decision upon the parties promptly, shall place it in the proceeding's public file and shall furnish it to such other persons as the ASC may direct. Pursuant to the provisions of chapter 7 of title 5 of the U.S. Code and section 1118(c)(3) of title XI of FIRREA (12 U.S.C. 3348(c)(3)), a final decision of the ASC is a prerequisite to seeking judicial review.

§ 1102.38 Compliance activities.

(a) Where, from complaints received from members of the public, communications from Federal or State agencies, examination of information by the ASC, or otherwise, it appears that a person has violated, is violating or is about to violate title XI of FIRREA or the rules or regulations thereunder, the ASC staff may commence an informal, preliminary inquiry into the matter. If, upon such inquiry, it appears that one or more allegations relate to possible violations of regulations administered by another agency or instrumentality of the Federal Government, then the matter shall be referred to that agency or instrumentality for appropriate action. The ASC, pursuant to its responsibilities under section 1103(a)(2) of title XI (12 U.S.C. 3332(a)(2)) and section 1119(c) of title XI (12 U.S.C. 3348)), shall monitor the matter. If, upon inquiry, it appears that one or more allegations are within the ASC's jurisdiction, then the ASC, in its discretion, may determine to commence a formal investigation respecting the matter and shall instruct the Secretary to create a public file for the formal investigation. The Secretary shall place in that file a memorandum naming the person or persons subject to the investigation and the statutory basis for the investigation.

(b) Unless otherwise instructed by the ASC or required by law, the Secretary shall ensure that all other papers, documents and materials gathered or submitted in connection with the investigation are non-public and for ASC use only.

(c) Persons who become involved in preliminary inquiries or formal investigations may, on their own initiative, submit a written statement to the Secretary setting forth their interests, positions or views regarding the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them and the amount of time that may be available for preparing and submitting such a statement prior to the presentation of a staff recommendation to the ASC. Upon the commencement of a formal investigation or a proceeding

under this subpart, the Secretary shall place any such statement in the appropriate public file.

(d) In instances where the staff has concluded its inquiry of a particular matter and has determined that it will not recommend the commencement of a formal investigation or a proceeding under this subpart against a person, the staff shall advise the person that its inquiry has been terminated. Such advice, if given, must in no way be construed as indicating that the person has been exonerated or that no action may ultimately result from the staff's inquiry into the particular matter.

§ 1102.39 Duty to cooperate.

In the course of the investigations and proceedings, the ASC (and its staff, with appropriate authorization) must provide parties or persons ample opportunity to work out problems by consent, by settlement, or in some other manner.

Subpart C—Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee

AUTHORITY: 12 U.S.C. 552a.

SOURCE: 57 FR 36357, Aug. 13, 1992, unless otherwise noted.

§ 1102.100 Authority, purpose and scope.

(a) This subpart is issued under the Privacy Act of 1974, Public Law 93-579, 88 Stat. 1896; 12 U.S.C. 552a, as amended.

(b) The Privacy Act of 1974 is based, in part, on the finding by Congress that "in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies." To achieve this objective, the Act generally provides that Federal agencies must advise an individual upon request whether records maintained by the agency in a system of records pertain to the individual and must grant the individual access to such records. The

Act further provides that individuals may request amendments to records pertaining to them that are maintained by the agency, and that the agency shall either grant the requested amendments or set forth fully its reasons for refusing to do so.

(c) The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC), pursuant to subsection (f) of the Privacy Act, adopts the following rules and procedures to implement the provisions of the Act summarized above and other provisions of the Act. These rules and procedures are applicable to all requests for information and access or amendment to records pertaining to an individual that are contained in any system of records that is maintained by the ASC.

§ 1102.101 Definitions.

The following definitions shall apply for purposes of this subpart:

(a) The terms *individual*, *maintain*, *record*, *system of records*, and *routine use* are defined for purposes of these rules as they are defined in 5 U.S.C. 552a(a)(2), (a)(3), (a)(4), (a)(5) and (a)(7).

(b) *ASC* or *Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(c) *Privacy Act Officer* means the ASC's Associate Director for Administration or such other ASC staff officer, other than the Executive Director, duly designated by the ASC's Executive Director.

§ 1102.102 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to records pertaining to them.

(a) *Place to make request.* Any request by an individual to be advised whether any system of records maintained by the ASC and named by the individual contains a record pertaining to him or her, or any request by an individual for access to a record pertaining to him or her that is contained in a system of records maintained by the ASC, shall be submitted in person at the ASC between 9 a.m. and 4:30 p.m., Monday through Friday, which is located at 2100 Pennsylvania Avenue, NW., suite

200, Washington, DC. 20037, or by mail addressed to: Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC. 20037. All requests will be required to be put in writing and signed by the individual making the request. In the case of requests for access that are made by mail, the envelope should be clearly marked "Privacy Act Request."

(1) *Information to be included in requests.* Each request by an individual concerning whether the ASC maintains in a system of records a record that pertains to the individual, or for access to any record pertaining to the individual that is maintained by the ASC in a system of records, shall include such information as will assist the ASC in identifying those records as to which the individual is seeking information or access. Where practicable, the individual should identify the system of records that is the subject of his or her request by reference to the ASC's notices of systems of records, which are published in the FEDERAL REGISTER, as required by section (e)(4) of the Privacy Act, 5 U.S.C. 552a(e)(4). Where a system of records is compiled on the basis of a specific identification scheme, the individual should include in his or her request the identification number or other identifier assigned to the individual. In the event the individual does not know that number or identifier, the individual shall provide other information, including his or her full name, address, date of birth and subject matter of the record, to aid in processing his or her request. If additional information is required before a request can be processed, the individual shall be so advised.

(2) *Verification of identity.* When the fact of the existence of a record is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, or when a record as to which access has been requested is not required to be disclosed under that Act, the individual seeking the information or requesting access to the record shall be required to verify his or her identity before access will be granted or information given. For this purpose, individuals shall appear at the ASC located at 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC., between 9

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a.m. to 4:30 p.m., Monday through Friday. The ASC's Office is not open on Saturdays, Sundays or Federal holidays.

(3) *Methods for verifying identity—appearance in person.* For the purpose of verifying identity, an individual seeking information regarding pertinent records or access to those records shall furnish documentation that may reasonably be relied on to establish the individual's identity. Such documentation might include a valid birth certificate, driver's license, employee or military identification card, and medicare card.

(4) *Method for verifying identity—by mail.* Where an individual cannot appear at the ASC's Office for the purpose of verifying identity, the individual shall submit, along with the request for information or access, a signed and notarized statement attesting to his or her identity. Where access is being sought, the sworn statement shall include a representation that the records being sought pertain to the individual and a stipulation that the individual is aware that knowingly and willfully requesting or obtaining records pertaining to an individual from the ASC under false pretenses is a criminal offense.

(5) *Additional procedures for verifying identity.* When it appears appropriate to the Privacy Act Officer, other arrangements may be made for the verification of identity as are reasonable under the circumstances and appear to be effective to prevent unauthorized disclosure of, or access to, individual records.

(b) *Acknowledgement of requests for information pertaining to individual records in a record system or for access to individual records.* (1) Except where an immediate acknowledgement is given for requests made in person, the receipt of a request for information pertaining to individual records in a record system will be acknowledged within 10 days, excluding Saturdays, Sundays and Federal holidays. Requests will be processed as promptly as possible and a response to such requests will be given within 30 days (excluding Saturdays, Sundays, and Federal holidays) unless, within the 30 day period and for cause shown, the individual making the re-

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quest is notified in writing that a longer period is necessary.

§ 1102.103 Disclosure of requested records.

(a) *Initial review.* Requests by individuals for access to records pertaining to them will be referred to the ASC's Privacy Act Officer, who initially will determine whether access will be granted.

(b) *Grant of request for access.* (1) If it is determined that a request for access to records pertaining to an individual will be granted, the individual will be advised by mail that access will be given at the ASC or a copy of the requested record will be provided by mail if the individual shall so indicate. Where the individual requests that copies of the record be mailed to or her or requests copies of a record upon reviewing it at the ASC, the individual shall pay the cost of making requested copies, as set forth in § 1102.109 of this subpart.

(2) In granting access to an individual to a record pertaining to him or her, the ASC staff shall take steps to prevent the unauthorized disclosure of information pertaining to other individuals.

(c) *Denial of request for access.* If it is determined that access will not be granted, the individual making the request will be notified of that fact and given the reasons why access is being denied. The individual also will be advised of his or her right to seek review by the Executive Director of the initial decision to deny access, in accordance with the procedures set forth in § 1102.107 of this subpart.

(d) *Time for acting on requests for access.* Access to a record pertaining to an individual normally will be granted or denied within 30 days (excluding Saturdays, Sundays, and Federal holidays) after the receipt of the request for access, unless the individual making the request is notified in writing within the 30 day period that, for good cause shown, a longer time is required. In such cases, the individual making the request shall be informed in writing of the difficulties encountered and an indication shall be given as to when it is anticipated that access may be granted or denied.

(e) *Authorization to allow designated person to review and discuss records pertaining to another individual.* An individual, who is granted access to records pertaining to him or her and who appears at the ASC Office to review the records, may be accompanied by another person of his or her choosing. Where the records as to which access has been granted are not required to be disclosed under provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, the individual requesting the records, before being granted access, shall execute a written statement, signed by him or her, specifically authorizing the latter individual to review and discuss the records. If such authorization has not been given as described, the person who has accompanied the individual making the request will be excluded from any review or discussion of the records.

(f) *Exclusion for certain records.* Nothing contained in these rules shall allow an individual access to any information compiled in reasonable anticipation of an administrative judicial or civil action or proceeding.

§ 1102.104 Special procedure: Medical records.

(a) *Statement of physician or mental health professional.* When an individual requests access to records pertaining to the individual that include medical and/or psychological information, the ASC, if it deems it necessary under the particular circumstances, may require the individual to submit with the request a signed statement by the individual's physician or a mental health professional indicating that, in his or her opinion, disclosure of the requested records or information directly to the individual will not have an adverse effect on the individual.

(b) *Designation of physician or mental health professional to receive records.* If the ASC believes, in good faith, that disclosure of medical and/or psychological information, directly to an individual could have an adverse effect on that individual, the individual may be asked to designate in writing a physician or mental health professional to whom the individual would like the records to be disclosed, and disclosure that otherwise would be made to the

individual will instead be made to the designated physician or mental health professional.

§ 1102.105 Requests for amendment of records.

(a) *Place to make requests.* A request by an individual to amend records pertaining to him or her may be made in person during normal business hours at the ASC located at 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC, or by mail addressed to the Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(1) *Information to be included in requests.* Each request to amend an ASC record shall reasonably describe the record sought to be amended. Such description should include, for example, relevant names, dates and subject matter to permit the record to be located among the records maintained by the ASC. An individual who has requested that a record pertaining to the individual be amended will be advised promptly if the record cannot be located on the basis of the description given and that further identifying information is necessary before the request can be processed. An initial evaluation of a request presented in person will be made immediately to ensure that the request is complete and to indicate what, if any, additional information will be required. Verification of the individual's identity as set forth in § 1102.102(a) (2), (3), (4) and (5) may also be required.

(2) *Basis for amendment.* An individual requesting an amendment to a record pertaining to the individual shall specify the substance of the amendment and set forth facts and provide such materials that would support his or her contention that the record as maintained by the ASC is not accurate, timely or complete, or that the record is not necessary and relevant to accomplish a statutory purpose of the ASC as authorized by law or by Executive Order of the President.

(b) *Acknowledgement of requests for amendment.* Receipt of a request to amend a record pertaining to an individual normally will be acknowledged in writing within 10 days after such request has been received, excluding Saturdays, Sundays and Federal holidays.

When a request to amend is made in person, the individual making the request will be given a written acknowledgement when the request is presented. The acknowledgement will describe the request received and indicate when it is anticipated that action will be taken on the request. No acknowledgement will be sent when the request for amendment will be reviewed, and an initial decision made, within the 10 day period after such request has been received.

§ 1102.106 Review of requests for amendment.

(a) *Initial review.* As in the case of requests for access, requests by individuals for amendment to records pertaining to them will be referred to the ASC's Privacy Act Officer for an initial determination.

(b) *Standards to be applied in reviewing requests.* In reviewing requests to amend records, the Privacy Act Officer will be guided by the criteria set forth in 5 U.S.C. 552(e) (1) and (5), *i.e.*, that records maintained by the ASC shall contain only such information as is necessary and relevant to accomplish a statutory purpose of the ASC as required by statute or Executive Order of the President and that such information also be accurate, timely, relevant and complete. These criteria will be applied whether the request is to add material to a record or to delete information from a record.

(c) *Time for acting on requests.* Initial review of a request by an individual to amend a record shall be completed as promptly as is reasonably possible and normally within 30 days (excluding Saturdays, Sundays, and Federal holidays) from the date the request was received, unless unusual circumstances preclude completion of review within that time. If the anticipated completion date indicated in the acknowledgement cannot be met, the individual requesting the amendment will be advised in writing of the delay and the reasons therefor, and also advised when action is expected to be completed.

(d) *Grant of requests to amend records.* If a request to amend a record is granted in whole or in part, the Privacy Act Officer will:

(1) Advise the individual making the request in writing of the extent to which it has been granted;

(2) Amend the record accordingly; and

(3) Where an accounting of disclosures of the record has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record of the fact that the record has been amended and the substance of the amendment.

(e) *Denial of requests to amend records.* If an individual's request to amend a record pertaining to him is denied in whole or in part, the Privacy Act Officer will:

(1) Promptly advise the individual making the request in writing of the extent to which the request has been denied;

(2) State the reasons for the denial of the request;

(3) Describe the procedures established by the ASC to obtain further review within the ASC of the request to amend, including the name and address of the person to whom the appeal is to be addressed; and

(4) Inform the individual that the Privacy Act Officer will provide information and assistance to the individual in perfecting an appeal of the initial decision.

§ 1102.107 Appeal of initial adverse agency determination regarding access or amendment.

(a) *Administrative review.* Any person who has been notified pursuant to § 1102.103(c) that a request for access to records pertaining to him or her has been denied in whole or in part, or pursuant to § 1102.106(e) of this subpart that a request for amendment has been denied in whole or in part, or who has received no response to a request for access or to amend within 30 days (excluding Saturdays, Sundays and Federal holidays) after the request was received by the ASC's staff (or within such extended period as may be permitted in accordance with §§ 1102.103(d) and 1102.106(c) of this subpart), may appeal the adverse determination or failure to respond by applying for an order of the Executive Director determining and directing that access to the record be granted or that the record be

amended in accordance with his or her request.

(1) The application shall be in writing and shall describe the record in issue and set forth the proposed amendment and the reasons therefor.

(2) The application shall be delivered to the ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC, or by mail addressed to the Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(3) The applicant may state such facts and cite such legal or other authorities in support of the application.

(4) The Executive Director will make a determination with respect to any appeal within 30 days after the receipt of such appeal (excluding Saturdays, Sundays, and Federal holidays), unless for good cause shown, the Executive Director shall extend that period. If such an extension is made, the individual who is appealing shall be advised in writing of the extension, the reasons therefor, and the anticipated date when the appeal will be decided.

(5) In considering an appeal from a denial of a request to amend a record, the Executive Director shall apply the same standards as set forth in § 1102.106(b).

(6) If the Executive Director concludes that access should be granted, the Executive Director shall issue an order granting access and instructing the Privacy Act Officer to comply with § 1102.103(b).

(7) If the Executive Director concludes that the request to amend the record should be granted in whole or in part, the Executive Director shall issue an order granting the requested amendment in whole or in part and instructing the Privacy Act Officer to comply with the requirements of § 1102.106(d) of this subpart, to the extent applicable.

(8) If the Executive Director affirms the initial decision denying access, the Executive Director shall issue an order denying access and advising the individual seeking access of:

(i) The order;
(ii) The reasons for denying access; and

(iii) The individual's right to obtain judicial review of the decision pursuant to 5 U.S.C. 552a(g)(1)(B).

(9) If the Executive Director determines that the decision of the Privacy Act Officer denying a request to amend a record should be upheld, the Executive Director shall issue an order denying the request and the individual shall be advised of:

(i) The order refusing to amend the record and the reasons therefor;

(ii) The individual's right to file a concise statement setting forth his or her disagreement with the Executive Director's decision not to amend the record;

(iii) The procedures for filing such a statement of disagreement with the Executive Director;

(iv) The fact that any such statement of disagreement will be made available to anyone to whom the record is disclosed, together with, if the Executive Director deems it appropriate, a brief statement setting forth the Executive Director's reasons for refusing to amend;

(v) The fact that prior recipients of the record in issue will be provided with the statement of disagreement and the Executive Director's statement, if any, to the extent that an accounting of such disclosures has been maintained pursuant to 5 U.S.C. 552a(c); and

(vi) The individual's right to seek judicial review of the Executive Director's refusal to amend, pursuant to 5 U.S.C. 552a(g)(1)(A).

(b) *Statement of disagreement.* As noted in paragraph (a)(9)(ii) of this section, an individual may file with the Executive Director a statement setting forth his or her disagreement with the Executive Director's denial of his or her request to amend a record.

(1) Such statement of disagreement shall be delivered to the ASC, 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC 20037, within 30 days after receipt by the individual of the Executive Director's order denying the amendment, excluding Saturdays, Sundays and Federal holidays. For good cause shown, this period can be extended for a reasonable time.

(2) Such statement of disagreement shall concisely state the basis for the individual's disagreement. Unduly lengthy or irrelevant materials will be

returned to the individual by the Executive Director for appropriate revisions before they become a permanent part of the individual's record.

(3) The record about which a statement of disagreement has been filed will clearly note which part of the record is disputed and the Executive Director will provide copies of the statement of disagreement and, if the Executive Director deems it appropriate, provide a concise statement of his or her reasons for refusing to amend the record, to persons or other agencies to whom the record has been or will be disclosed.

§ 1102.108 General provisions.

(a) *Extensions of time.* Pursuant to §§ 1102.103(b), 1102.104(d), 1102.109(c) and 1102.109(a)(4) of this subpart, the time within which a request for information, access or amendment by an individual with respect to records maintained by the ASC that pertain to him or her normally would be processed may be extended for good cause shown or because of unusual circumstances. As used in these rules, *good cause* and *unusual circumstances* shall include, but only to the extent reasonably necessary to the proper processing of a particular request:

(1) The need to search for and collect the requested records from establishments that are separate from the ASC. Some records of the ASC may be stored in Federal Records Centers in accordance with law—including many of the documents that have been on file with the ASC for more than 2 years—and cannot be made available promptly. Any person who has requested for personal examination a record stored at the Federal Records Center will be notified when the record will be made available.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which may be demanded in a single request. While every reasonable effort will be made to comply fully with each request as promptly as possible on a first-come, first-served basis, work done to search for, collect and appropriately examine records in response to a request for a large number of records will be contingent upon the

availability of processing personnel in accordance with an equitable allocation of time to all members of the public who have requested or wish to request records.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components within the ASC having substantial subject-matter interest herein.

(b) *Effective date of action.* Whenever it is provided in this subpart that an acknowledgement or response to a request will be given by specific times, deposit in the mails of such acknowledgement or response by that time, addressed to the person making the request, will be deemed full compliance.

(c) *Records in use by a member of the ASC or its staff.* Although every effort will be made to make a record in use by a member of the ASC or its staff available when requested, it may occasionally be necessary to delay making such a record available when doing so at the time the request is made would seriously interfere with the work of the ASC or its staff.

(d) *Missing or lost records.* Any person who has requested a record or a copy of a record pertaining to him or her will be notified if the record sought cannot be found. If the person so requests, he or she will be notified if the record subsequently is found.

(e) *Oral requests; misdirected written requests—(1) Telephone and other oral requests.* Before responding to any request by an individual for information concerning whether records maintained by the ASC in a system of records pertain to the individual or to any request for access to records by an individual, such request must be in writing and signed by the individual making the request. The Executive Director will not entertain any appeal from an alleged denial of failure to comply with an oral request. Any person who has made an oral request for information or access to records who believes that the request has been improperly denied should resubmit the request in appropriate written form to obtain proper consideration and, if need be, administrative review.

(2) *Misdirected written requests.* The ASC cannot assure that a timely or satisfactory response will be given to written requests for information, access or amendment by an individual with respect to records pertaining to him or her that are directed to the ASC other than in a manner prescribed in §§ 1102.103(a), 1102.106(a), 1102.108(a)(2), and 1102.110 of this subpart. Any staff member who receives a written request for information, access or amendment should promptly forward the request to the Privacy Act Officer. Misdirected requests for records will be considered to have been received by the ASC only when they have been actually received by the Privacy Act Officer in cases under § 1102.108(a)(2). The Executive Director will not entertain any appeal from an alleged denial or failure to comply with a misdirected request, unless it is clearly shown that the request was in fact received by the Privacy Act Officer.

§ 1102.109 Fees.

(a) There will be no charge assessed to the individual for the ASC's expense involved in searching for or reviewing the record. Copies of the ASC's records will be provided by a commercial copier at rates established by a contract between the copier and the ASC or by the ASC at the rates in § 1101.4(b)(5)(ii) of 12 CFR part 1101.

(b) *Waiver or reduction of fees.* Whenever the Executive Director of the ASC determines that good cause exists to grant a request for reduction or waiver of fees for copying documents, he or she may reduce or waive any such fees.

§ 1102.110 Penalties.

Title 18 U.S.C. 1001 makes it a criminal offense, subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years or both, to knowingly and willingly make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. 5 U.S.C. 552a(i) makes it a misdemeanor punishable by a fine of not more than \$5,000 for any person knowingly and willfully to request or obtain any record concerning an individual from the ASC under false pretenses. 5 U.S.C. 552a(i) (1) and (2)

provide criminal penalties for certain violations of the Privacy Act by officers and employees of the ASC.

Subpart D—Description of Office, Procedures, Public Information

AUTHORITY: 5 U.S.C. 552, 553(e); and Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p. 235).

SOURCE: At 57 FR 60724, Dec. 22, 1992, unless otherwise noted.

§ 1102.300 Authority, scope and purpose.

This subpart implements the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, with respect to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and establishes related information disclosure procedures and fees.

§ 1102.301 Definitions.

(a) *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(b) *FFIEC* means the Federal Financial Institutions Examination Council.

§ 1102.302 ASC authority and functions.

(a) *Authority.* The ASC was established on August 9, 1989, pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("FIRREA"), 12 U.S.C. 3331 and 3310 through 3351. Title XI is intended "to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." 12 U.S.C. 3331.

(b) *Functions.* The ASC's statutory functions are generally set out in 12 U.S.C. 3332. In summary, the ASC must:

(1) Monitor the requirements established by the States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related

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transactions, including a code of professional responsibility;

(2) Monitor the requirements of the Federal financial institutions regulatory agency and Resolution Trust Corporation with respect to appraisal standards for federally related transactions and determinations as to which federally related transactions require the services of a State certified appraiser and which require the services of a State licensed appraiser;

(3) Monitor and review the practices, procedures, activities and organizational structure of the Appraisal Foundation; and

(4) Maintain a national registry of State certified and licensed appraisers eligible to perform appraisals in federally related transactions.

§ 1102.303 Organization and methods of operation.

(a) *Statutory and other guidelines.* Statutory requirements relating to the ASC's organization are stated in 12 U.S.C. 3310, 3333 and 3334. The ASC has adopted and published Rules of Operation guiding its administration, meetings and procedures. These Rules of Operation were published at 56 FR 28561 (June 21, 1991) and 56 FR 33451 (July 22, 1991).

(b) *ASC members and staff.* The ASC is composed of six members, each being designated by the head of their respective agencies: the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Office of Thrift Supervision, and the Department of Housing and Urban Development. Administrative support and substantive program, policy and legal guidance for ASC activities are provided by a small, full-time, professional staff supervised by the Executive Director, Associate Director for Administration, Associate Director for Policy and Programs and the General Counsel.

(c) *FFIEC.* Title XI placed the ASC within FFIEC as a separate, appropriated agency of the United States Government with specific statutory responsibilities under Federal law.

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(d) *ASC Address.* ASC offices are located at 2100 Pennsylvania Avenue NW., suite 200, Washington, DC 20037.

§ 1102.304 General requirements, exemptions, procedures and other matters.

(a) *In general.* The ASC, as part of the FFIEC, has determined that the FFIEC's regulations at 12 CFR 1101.4 and 1101.5 pertaining to the implementation of, and compliance with, FOIA. Therefore, the ASC is incorporating by reference into this subpart the FFIEC's regulations at 12 CFR 1101.4 and 1101.5, subject to the following conforming changes.

(b) *Exceptions.* Because the ASC is an appropriated U.S. Government agency with specific statutory responsibilities, the FFIEC's regulations at 12 CFR 1101.4 and 1101.5, as incorporated by reference into this subpart, are amended as follows:

(1) All references to the term "Council" in 12 CFR 1101.4 and 1101.5 shall be deleted, and the term "ASC" shall be inserted;

(2) All references to the term "Executive Secretary" in 12 CFR 1101.4 and 1101.5 shall be deleted, and the term "Executive Director" shall be inserted;

(3) All references to "§ 1101.3(e)" in 12 CFR 1101.4 (a) and (b)(3) (i) and (iii) shall be deleted, and new references to "§ 1102.303(d)" shall be inserted; and

(4) The reference to "\$.25" in 12 CFR 1101.4(b)(5)(ii)(C)(1) shall be deleted and "\$.15" shall be inserted.

§ 1102.305 Availability of interpretive, no-action and other written communications.

(a) *In general.* Subject to the provisions of § 1102.304 and subpart C of this part, certain types of ASC written communications shall be made publicly available upon request.

(b) *Types of written communications.* The following types of written communications shall be subject to paragraph (a) of this section:

(1) The ASC's annual report to Congress;

(2) All final opinions and orders made in the adjudication of cases;

(3) All statements of general policy not published in the FEDERAL REGISTER.

(4) Requests for the ASC or its staff to provide interpretive advice with respect to the meaning or application of any statute administered by the ASC or any rule or regulation adopted thereunder and any ASC responses thereto;

(5) Requests for a statement that, on the basis of the facts presented in such a request, the ASC would not take any enforcement action pertaining to the facts as represented and any ASC responses thereto; and

(6) Correspondence between the ASC and a State appraiser regulatory agency arising out of the ASC's field review of the State agency's appraiser regulatory program.

(c) *Embargo period.* Unless the ASC determines otherwise, the written communications in paragraph (b) of this section shall be made publicly available no sooner than ten business days after a written response has been sent or given to the affected person or persons.

[59 FR 1902, Jan. 13, 1994]

§ 1102.306 Confidential treatment procedures.

(a) *In general.* Any submitter of written information to the ASC who desires that some or all of his or her submission be afforded confidential treatment under 5 U.S.C. 552(b)(4) (*i.e.*, trade secrets and commercial or financial information obtained from a person and privileged or confidential) shall file a request for confidential treatment with the Executive Director of the ASC at the time the written information is submitted to the ASC or within ten business days thereafter. Nothing in this section limits the authority of the ASC and its staff to make determinations regarding access to documents under this subpart.

(b) *Form of request.* A request for confidential treatment shall be submitted in a separate letter or memorandum conspicuously entitled, "Request for Confidential Treatment." Each request shall state in reasonable detail the facts and arguments supporting the request and its legal justification. If the submitter had been required by the ASC to provide the particular information, conclusory statements that the information would be useful to com-

petitors or would impair sales or similar statements generally will not be considered sufficient to justify confidential treatment. When the submitter had voluntarily provided the particular information to the ASC, the submitter must specifically identify the documents or information which are of a kind the submitter would not customarily make available to the public.

(c) *Designation and separation of confidential material.* Submitters shall clearly designate all information considered confidential and shall clearly separate such information from other non-confidential information, whenever possible.

(d) *ASC action on request.* A request for confidential treatment of information will be considered only in connection with a request for access to the information under FOIA as implemented by this subpart. Upon the receipt of a request for access, the Executive Director or his or her designee ("ASC Officer") as soon as possible shall provide the submitter with a written notice describing the request and shall provide the submitter with a reasonable opportunity, no longer than ten business days, to submit written objections to disclosure of the information. Notice may be given orally, and such notice shall be promptly confirmed in writing. The ASC Officer may provide a submitter with a notice if the submitter did not request confidential treatment of the requested information. If the ASC required the submitter to provide the requested information, the ASC Officer would need substantial reason to believe that disclosure of the requested information would result in substantial competitive harm to the submitter. If the submitter provided the information voluntarily to the ASC, the ASC officer would need to believe that the information is of a kind the submitter would not customarily make available to the public. The ASC Officer similarly shall notify the person seeking disclosure of the information under FOIA of the existence of a request for confidential treatment. These notice requirements need not be followed if the ASC Officer determines under this subpart that the information should not be disclosed; the information has been published or

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has been officially made available to the public; disclosure of the information is required by law (other than FOIA); or the submitter's request for confidential treatment appears obviously frivolous, in such instance the submitter shall be given written notice of the determination to disclose the information at least five business days prior to release. The ASC Officer shall carefully consider the issues involved, and if disclosure of the requested information is warranted, a written notice, containing a brief description of why the submitter's objections were not sustained, must be forwarded to the submitter within ten business days. The time for response may be extended up to ten additional business days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requester and the ASC Officer. This notice shall be provided to the submitter at least five business days prior to release of the requested information.

(e) *Notice of lawsuit.* The ASC Officer shall notify a submitter of any filing of any suit against the ASC pursuant to 5 U.S.C. 552 to compel disclosure of documents or information covered by the submitter's request for confidential treatment within ten business days of service of the suit. The ASC Officer also shall notify the requester of the

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documents or information of any suit filed by the submitter against the ASC to enjoin their disclosure within ten business days of service of the suit.

[59 FR 1902, Jan. 13, 1994]

§ 1102.307 Right to petition for issuance, amendment and repeal of rules of general application.

Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition for those purposes with the Executive Director of the ASC. The petition shall include a statement setting forth the text or substance of any proposed rule or amendment desired or shall specify the rule for which repeal is desired. The petitioner also shall state the nature of his or her interest and the reasons for seeking ASC action. The Executive Director shall acknowledge receipt of the petition within ten business days of receipt. As soon as reasonably practicable, the ASC shall consider the petition and related staff recommendations and shall take such action as it deems appropriate. The Executive Director shall notify the petitioner in writing of the ASC action within ten business days of the action.

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